

the request for review to the other parties to the ALJ decision or dismissal who received a copy of the hearing decision under § 405.1046(a) or a copy of the notice of dismissal under § 405.1052(b). Failure to copy the other parties tolls the MAC's adjudication deadline set forth in § 405.1100 until all parties to the hearing receive notice of the request for MAC review. If the request for review is timely filed with an entity other than the entity specified in the notice of the ALJ's action, the MAC's adjudication period to conduct a review begins on the date the request for review is received by the entity specified in the notice of the ALJ's action. Upon receipt of a request for review from an entity other than the entity specified in the notice of the ALJ's action, the MAC sends written notice to the appellant of the date of receipt of the request and commencement of the adjudication timeframe.

(b) If an appellant files a request to escalate an appeal to the MAC level because the ALJ has not completed his or her action on the request for hearing within the adjudication deadline under § 405.1016, the request for escalation must be filed with both the ALJ and the MAC. The appellant must also send a copy of the request for escalation to the other parties. Failure to copy the other parties tolls the MAC's adjudication deadline set forth in § 405.1100 until all parties to the hearing receive notice of the request for MAC review. In a case that has been escalated from the ALJ, the MAC's 180 calendar day period to issue a final decision, dismissal order, or remand order begins on the date the request for escalation is received by the MAC.

[74 FR 65337, Dec. 9, 2009]

§ 405.1108 MAC actions when request for review or escalation is filed.

(a) Except as specified in paragraphs (c) and (d) of this section, when a party requests that the MAC review an ALJ's decision, the MAC will review the ALJ's decision *de novo*. The party requesting review does not have a right to a hearing before the MAC. The MAC will consider all of the evidence in the administrative record. Upon completion of its review, the MAC may adopt, modify, or reverse the ALJ's decision

or remand the case to an ALJ for further proceedings.

(b) When a party requests that the MAC review an ALJ's dismissal, the MAC may deny review or vacate the dismissal and remand the case to the ALJ for further proceedings.

(c) The MAC will dismiss a request for review when the party requesting review does not have a right to a review by the MAC, or will dismiss the request for a hearing for any reason that the ALJ could have dismissed the request for hearing.

(d) When an appellant requests escalation of a case from the ALJ level to the MAC, the MAC may take any of the following actions:

(1) Issue a decision based on the record constructed at the QIC and any additional evidence, including oral testimony, entered in the record by the ALJ before the case was escalated.

(2) Conduct any additional proceedings, including a hearing, that the MAC determines are necessary to issue a decision.

(3) Remand the case to an ALJ for further proceedings, including a hearing.

(4) Dismiss the request for MAC review because the appellant does not have the right to escalate the appeal.

(5) Dismiss the request for a hearing for any reason that the ALJ could have dismissed the request.

§ 405.1110 MAC reviews on its own motion.

(a) *General rule.* The MAC may decide on its own motion to review a decision or dismissal issued by an ALJ. CMS or any of its contractors may refer a case to the MAC for it to consider reviewing under this authority anytime within 60 calendar days after the date of an ALJ's decision or dismissal.

(b) *Referral of cases.* (1) CMS or any of its contractors may refer a case to the MAC if, in their view, the decision or dismissal contains an error of law material to the outcome of the claim or presents a broad policy or procedural issue that may affect the public interest. CMS may also request that the MAC take own motion review of a case if—

(i) CMS or its contractor participated in the appeal at the ALJ level; and

(ii) In CMS' view, the ALJ's decision or dismissal is not supported by the preponderance of evidence in the record or the ALJ abused his or her discretion.

(2) CMS' referral to the MAC is made in writing and must be filed with the MAC no later than 60 calendar days after the ALJ's decision or dismissal is issued. The written referral will state the reasons why CMS believes the MAC must review the case on its own motion. CMS will send a copy of its referral to all parties to the ALJ's action who received a copy of the hearing decision under § 405.1046(a) or the notice of dismissal under § 405.1052(b), and to the ALJ. Parties to the ALJ's action may file exceptions to the referral by submitting written comments to the MAC within 20 calendar days of the referral notice. A party submitting comments to the MAC must send such comments to CMS and all other parties to the ALJ's decision who received a copy of the hearing decision under § 405.1046(a) or the notice of dismissal under § 405.1052(b).

(c) *Standard of review.* (1) Referral by CMS after participation at the ALJ level. If CMS or its contractor participated in an appeal at the ALJ level, the MAC exercises its own motion authority if there is an error of law material to the outcome of the case, an abuse of discretion by the ALJ, the decision is not consistent with the preponderance of the evidence of record, or there is a broad policy or procedural issue that may affect the general public interest. In deciding whether to accept review under this standard, the MAC will limit its consideration of the ALJ's action to those exceptions raised by CMS.

(2) *Referral by CMS when CMS did not participate in the ALJ proceedings or appear as a party.* The MAC will accept review if the decision or dismissal contains an error of law material to the outcome of the case or presents a broad policy or procedural issue that may affect the general public interest. In deciding whether to accept review, the MAC will limit its consideration of the ALJ's action to those exceptions raised by CMS.

(d) *MAC's action.* If the MAC decides to review a decision or dismissal on its

own motion, it will mail the results of its action to all the parties to the hearing and to CMS if it is not already a party to the hearing. The MAC may adopt, modify, or reverse the decision or dismissal, may remand the case to an ALJ for further proceedings or may dismiss a hearing request. The MAC must issue its action no later than 90 calendar days after receipt of the CMS referral, unless the 90 calendar day period has been extended as provided in this subpart. The MAC may not, however, issue its action before the 20 calendar day comment period has expired, unless it determines that the agency's referral does not provide a basis for reviewing the case. If the MAC does not act within the applicable adjudication deadline, the ALJ's decision or dismissal is binding on the parties to the ALJ decision.

[70 FR 11472, Mar. 8, 2005, as amended at 74 FR 65337, Dec. 9, 2009]

§ 405.1112 Content of request for review.

(a) The request for MAC review must be filed with the MAC or appropriate ALJ hearing office. The request for review must be in writing and may be made on a standard form. A written request that is not made on a standard form is accepted if it contains the beneficiary's name; Medicare health insurance claim number; the specific service(s) or item(s) for which the review is requested; the specific date(s) of service; the date of the ALJ's decision or dismissal order, if any; if the party is requesting escalation from the ALJ to the MAC, the hearing office in which the appellant's request for hearing is pending; and the name and signature of the party or the representative of the party; and any other information CMS may decide.

(b) The request for review must identify the parts of the ALJ action with which the party requesting review disagrees and explain why he or she disagrees with the ALJ's decision, dismissal, or other determination being appealed. For example, if the party requesting review believes that the ALJ's action is inconsistent with a statute, regulation, CMS Ruling, or other authority, the request for review should explain why the appellant believes the